

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Charles & Ray Mann

Date application filed with the Town Clerk: February 19, 2009

Nature of request: Special Permit to modify the site plan approved in ZBA FY2009-00003 and approval at a Public Meeting of plans and information as per conditions 10, 12, 15 of ZBA FY2009-00003

Address: Owen Drive (Map 5D, Parcels 315, 314, 313, 304, 303, R-N/R-LD Zone)

Legal notice: Published February 25 and March 4, 2009 in the Daily Hampshire Gazette and sent to abutters on February 20, 2009

Board members: Thomas Simpson, Jane Ashby and Albert Woodhull

Submissions: The petitioner submitted with the following with the application:

- One (1) copy of the ZBA application filed with the Town Clerk, February 9, 2009;
- One (1) copy of the previous Special Permit, ZBA FY2009-00003, dated October 2, 2008;
- One (1) copy of a Written Project Summary;
- One (1) copy of a common access agreement as per condition # 12 of ZBA FY2009-00003;
- One (1) copy of a letter from SVE dated February 17, 2009 regarding topsoil and graded area as per condition # 10 of ZBA FY2009-00003;
- One (1) copy of a lighting and street sign detail as per condition #10 of ZBA FY2009-00003;
- One (1) set of Construction Plans (sheets 1-9), prepared by SVE Associates, dated February 10, 2009;
- One (1) copy of a Landscape Plan titled R.K. & C.C. Mann East Pleasant Street Solar Courtyard Homes, dated February 16, 2009;
- One (1) copy of a memorandum prepared by Staff, dated March 6, 2009.

Site Visit:

Due to the nature of the request and provided that the Board members had seen the property as part of the previous application; no site visit was scheduled for this application.

Public Hearing: March 12, 2009

The application was presented by the applicant, Ray Mann, and Anthony Wonseski Jr., P.E. of SVE Associates. Ms. Mann stated the following:

- They are still the prospective buyers of the property at Owen Drive and East Pleasant Street;
- There was an appeal of the previous permit, which was settled out of court;
- The settlement included revisions to the previously approved site plan;
- They are seeking approval for modifications to the previously approved site plan;

- They are also seeking public meeting approval of several items required in the conditions of the previous permit;
- Modification of the dwelling configuration on Lot 4 reflecting reduced ground excavation and disturbance of existing trees;
- We have worked with a prospective buyer for this site to develop a design for the site;
- We will maintain the previously approved 8 foot no disturbance buffer and have agreed with the abutter to establish a 20 foot tree buffer zone along the north property line and a 35 foot building setback pertaining to lot 4 to address the concerns of stability of the slope along that property line;
- As a result of the changes to the dwelling configuration on Lot 4, they are proposing to relocate the fire truck turnaround to the south side of the common driveway;
- The revised location of the fire truck turnaround was shown to and discussed with Assistant Fire Chief Mike Zlogar and he had verbally approved the design.

Ms. Mann stated that Mr. Zlogar indicated that the second emergency turnaround closer to East Pleasant Street is not required. As such, we are proposing to modify Condition 14 of the previous permit to allow only one emergency turnaround. The former emergency turnaround, closer to East Pleasant Street will be retained for use by standard vehicles and also acts as the access to the public stormwater easement.

Mr. Simpson asked if Lot 4, as shown, has two driveways. Ms. Mann indicated that they have arranged for two separate parking areas to incorporate the future consideration for a supplemental apartment on this lot, which will require a separate Special Permit.

Mr. Woodhull noted that the original approval showed the same house design on each parcel, and the new plan shows a different configuration for Lot 4.

Mr. Simpson read into the record the letter, dated March 11, 2009, prepared by Jason Skeels, Town Engineer indicating that he had reviewed the submitted plans.

Mr. Simpson asked if any members of the public would like to speak to the application.

Eugene Borowski, owner of 325 Pine Street, sought clarification from the applicant that the plans under consideration represent the terms of the settlement agreement. Ms. Mann stated that the plans are in accordance the settlement of the appeal.

Mr. Simpson stated that if the plans do not meet the terms of the agreement, the applicant would have to come back to the Board.

Mr. Borowski sought clarification on whether each lot is approved for two-family residences. Mr. Simpson stated that the applicant originally asked for each lot to have a supplemental apartment. However, the Board voted to approve only one lot with a supplemental apartment and required that if a supplemental apartment is proposed on another lot, an additional Special Permit would be required.

Eugene Borowski Jr., stated that his grandparents own the adjacent property to the north and asked for confirmation that there would not any retaining walls necessary along the north property line. Ms. Mann and Anthony Wonseski stated that the slope along that property line is 2:1 and there will be no retaining walls required to support the slope along the north property line.

Ms. Ashby made a motion to close the evidentiary portion of the public hearing. Mr. Woodhull seconded the motion. The Board voted unanimously to close the evidentiary portion of the public hearing.

Public Meeting:

The Board discussed the submission of materials associated with Condition 10 of the previous permit requiring review and approval of street signs, low level and downcast lighting and the amount of topsoil needed for grading, as follows:

- The Board determined that the design, size and material of the sign, as shown on the Typical Sign Detail on the Site Plan [sheet 3 of 9] and separate document showing lighting details are adequate and appropriate.
- In reviewing the Site Plan [sheet 3 of 9], the Board determined that the location of the street address sign was too far back from the street to be clearly viewed from East Pleasant Street. Ms. Weeks stated that the Board can amend the plan to show an area where the directional sign should be located. A directional sign in the Town Right-of-Way requires approval by the Select Board. The Board recognized that Select Board approval may be required for the sign in the public way and recommend its approval. The Board amended the Site Plan.
- The Board discussed the letter from SVE Associates, dated February 17, 2009, regarding the amount of topsoil needed for landscaping purposes. The Board discussed the amount of traffic that would be produced by bring in 2,440 cubic yards of topsoil. Mr. Wonseski explained that he estimates the number of truck loads as being approximately 100 trips and that there would be a significant amount of activity on the site during the initial construction phase. He explained that as soon as the site is graded, it will be loamed and seeded to prevent erosion and runoff of materials on site. He added that the amount of topsoil is greater than what is typically required because the site is a former gravel pit.

Mr. Wonseski reviewed and discussed the Erosion Control Plan in connection with Condition 15 of the previous permit. The Board determined that the Erosion Control Plan was adequate.

The Board discussed the submission of a common access agreement, prior to filing with the Registry of Deeds, as required in Condition 12 of the previous permit. Ms. Mann explained the key elements of common access agreement, as follows:

- Reviewed by Jason Skeels, Town Engineer;
- Non-exclusive utility agreement;
- Walkway to be kept free from obstruction at all times;
- Shared cost of improving, maintaining or repairing the common driveway, stormwater drainage, fire hydrant and signs;
- Snow removal and de-icing.

The Board determined the following:

- The common access agreement, which had been reviewed by the Town Engineer, and as presented was adequate;
- The modification of Condition 14, to reduce the fire truck turnarounds from two to one, is acceptable based upon the recommendation of Assistant Chief Zlogar;
- The revised landscape plan, submitted with the application, shall be approved and included in as part of approved plans;
- The new permit shall supplement the previous permit, ZBA FY2009-00003.

Ms. Ashby made a motion to close the public meeting. Mr. Woodhull seconded the motion. The Board voted unanimously to close the public meeting.

Findings:

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood and is compatible with existing uses in the same District. The modification to the Special Permit incorporates changes identified as a resolution to an appeal from an abutter. The proposal allows for the applicant to incorporate the agreed upon changes, including an increased building setback on Lot 4 and increased non-disturbance buffer area along the north property line. The other approved changes to the Site Plan are in accordance with the general intent of the bylaw and do not affect the compatibility of the residential project with the neighborhood.

10.382 and 10.385 – The proposal would not constitute a nuisance and reasonably protects the adjoining premises against detrimental or offensive uses on the site. The permit maintains the requirement for screening and vegetation to remain on the perimeter of the property. Additionally, the approved modifications to the site plan include an increased building setbacks and non-disturbance buffer areas along the north property line to help preserve the stability of the slope.

10.383 and 10.387 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians and the proposal provides convenient and safe vehicular and pedestrian movement within the site and in relation to adjacent streets. The original site plan contained two emergency vehicle turn-arounds, one at the entrance of the common driveway closer to East Pleasant Street and another towards the end of the common driveway. The modification allows for the removal of the emergency vehicle turnaround closer to East Pleasant Street but the applicant will maintain the turnaround for use by standard vehicles, thus reducing any need for vehicles to back onto East Pleasant Street. The site plan maintains a pedestrian walkway along the common driveway for use by residents to access East Pleasant Street and available public transportation.

10.384 – Adequate and appropriate facilities would be provided for the proper operation of the proposed use. The Common Access Agreement submitted by the applicant and approved by the Board requires the future owners of the parcels to contribute to the maintenance of, but not limited to, the common driveway, utilities and stormwater drainage areas. The property will contain adequate street identification signs indicating the dwelling units accessed by the common driveway.

10.392 – The proposal provides adequate landscaping, including the screening of adjacent residential uses. The applicant has agreed to establish an area of non-disturbance, a tree buffer and increased building setbacks along the north property line. The perimeter of the property will remain in vegetation to provide screening from other adjacent residential uses.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw. The modification of the site plan allows the applicant to mitigate the concerns of an abutter. The applicant has provided additional information, including adequate street identification signs, erosion control plans to be implemented during construction in compliance with the requirements of the previous Special Permit.

Public Meeting – Zoning Board Decision

Mr. Simpson made a motion approve the street signs and location, the topsoil calculations, common access agreement and erosion control plan. Ms. Ashby seconded the Motion. The Board voted unanimously to approve the street signs and the location, as amended, topsoil calculations, common access agreement and erosion control plan.

Mr. Simpson made a motion to approve the submitted site plan [sheet 3 of 9] as contained in the Construction Set drawings prepared by SVE Associates, dated February 10, 2009, and preliminary landscape plan titled R.K. & C.C Mann East Pleasant Street parcel dated February 16, 2009, showing the additional setbacks along the north boundary setbacks, modification of the dwelling location on lot 4 and the relocation of the emergency vehicle turnaround and the removal of the emergency vehicle turnaround closest to East Pleasant Street.

Ms. Ashby seconded the motion. The Board VOTED unanimously to approve the site plan as stated above.

For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit, ZBA FY2009-00028, to modify the site plan previously approved in Special Permit, ZBA FY2009-00003, containing additional building and non-disturbance buffer setbacks along the north property line, modification of the dwelling location on lot 4 and the relocation of the emergency vehicle turnaround and the removal of the emergency vehicle turnaround closest to East Pleasant Street, as applied for by Charles and Ray Mann, at Owen Drive (Map 5D, Parcel 303, 304, 313, 314, 315, R-N and R-LD Zoning Districts), with conditions.

THOMAS SIMPSON

JANE ASHBY

ALBERT WOODHULL

FILED THIS _____ day of _____, 2009 at _____,
in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2009.
NOTICE OF DECISION mailed this _____ day of _____, 2009
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2009,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit, ZBA FY2009-00028, to modify the site plan previously approved in Special Permit, ZBA FY2009-00003, containing additional building and non-disturbance buffer setbacks along the north property line, modification of the dwelling location on lot 4 and the relocation of the emergency vehicle turnaround and the removal of the emergency vehicle turnaround closest to East Pleasant Street, as applied for by Charles and Ray Mann, at Owen Drive (Map 5D, Parcel 303, 304, 313, 314, 315, R-N and R-LD Zoning Districts), with the following conditions:

1. The site, consisting of two frontage and three flag lots, and a shared driveway shall be developed according to the Construction Set, Plans For Common Driveway East Pleasant Street, prepared by SVE Associates, dated February 10, 2009 and the Landscape Plan titled R.K. & C.C. Mann East Pleasant Street Solar Courtyard Homes, dated February 16, 2009, stamped approved by the Zoning Board of Appeals dated March 12, 2009.
2. The location of all residential buildings on the flag lots shall be approved by the Board at a public meeting prior to issuance of a building permit.
3. All residences shall be single family, owner-occupied, with one supplemental apartment allowed for the applicant's own residence at Lot #5.
4. The accessory apartment shall be built according to the plans submitted and shall be no more than 800 square feet in area, or 900 square feet if fully handicapped accessible.
5. The accessory apartment shall have no more than three occupants.
6. The creation of any additional dwelling units, except for as identified in condition 3, shall require a Special Permit by the Zoning Board of Appeals.
7. There shall be parking for four (4) vehicles for Lot #5 as shown on the submitted plans.
8. The shared driveway shall meet all the conditions of Section 7.712 of the Zoning Bylaw. Specifically, from north to south, there shall be a two foot wide shoulder, a 16 foot wide shared driveway, a 4 foot wide sidewalk, and a one foot shoulder, creating a 21 foot wide prepared area for drivers and pedestrians.
9. The four foot wide pedestrian walkway shall have a surface visually distinct from the shared driveway and shall meet ADA requirements.
10. No sodium chloride (salt) shall be used on the shared or on individual driveways. Environmentally sensitive alternative de-icing materials shall be used instead, as listed in Section 3.254 of the Bylaw.
11. The street address sign shall be designed in accordance with the Typical Sign Detail and located in accordance with the location as shown and amended on the site plan [sheet 3 of 9] approved by the Zoning Board of Appeals on March 12, 2009. The location of the street address sign may require approval by the Town Select Board prior to installation.
12. The street signs, low level and downcast lighting shall be in accordance with the separate informational document stamped approved by the Zoning Board of Appeals dated March 12, 2009;
13. The amount of topsoil needed for landscaping purposes shall be in accordance with the Opinion of Topsoil Import Quantity document prepared by SVE Associates, stamped approved by the Zoning Board of Appeals dated March 12, 2009.

14. Topsoil applied to the disturbed areas shall be applied in accordance with Section 5.10 of the Zoning Bylaw.
15. Easements for the storm water drainage areas shall be submitted to the Board for the files after filing at the Registry of Deeds.
16. The finished grade on the northerly bank shall be no steeper than 2:1.
17. An 8-foot wide undisturbed buffer shall be preserved along the northern boundary, and all trees within that buffer shall remain.
18. New as-built site plans shall be submitted to the Board for approval at a public meeting showing the finished areas after building the roadway and sidewalk.

THOMAS SIMPSON, Chair
Amherst Zoning Board of Appeals

DATE